IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 28514 of 2007(T)

PETITIONER:

V.A.ABDUL LATHIF,
VARIKKADAN HOUSE, PALLIKKAVALA,
MUDICKAL P.O., PERUMBAVOOR.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR
SRI.A.AHZAR

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DISTRICT COLLECTOR, ERNAKULAM.**

3. **MUNICIPAL SECRETARY, PERUMBAVOOR MUNICIPALITY.**

4. **THATCHI MUSTAFA, W/O LATE K.K.MUSTHAFA, KURUMPALIL HOUSE, MUDICKAL P.O., PERUMBAVOOR.**

5. **SUBAIDA, D/O LATE K.K.MUSTHAFA, KURUMPALIL HOUSE, MUDICKAL P.O., PERUMBAVOOR.**

6. **NAFEESA, D/O LATE K.K.MUSTHAFA, KURUMPALIL HOUSE, MUDICKAL P.O., PERUMBAVOOR.**

7. RAZIA, D/O LATE K.K.MUSTHAFA,
KURUMPALIL HOUSE, MUDICKAL P.O.,
PERUMBAVOOR.

8. SUHARA, D/O LATE K.K.MUSTHAFA,
KURUMPALIL HOUSE, MUDICKAL P.O.,
PERUMBAVOOR.

9. KARIM, S/O LATE K.K.MUSTHAFA,
KURUMPALIL HOUSE, MUDICKAL P.O.,
PERUMBAVOOR.

10. SAJAD, S/O LATE K.K.MUSTHAFA,
KURUMPALIL HOUSE, MUDICKAL P.O.,
PERUMBAVOOR.

BY GOVERNMENT PLEADER for R1 & R2
BY ADV. SRI. V.M.KURIAN for R3
SRI.ASP.KURUP for R4 to R10
SRI.SADCHITH.P.KURUP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.28514/2007 T

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF PLAN SHOWING THE PURAMBOKE LAND.

EXT.P2: COPY OF THE ORDER IN APPEAL NO.134/06 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DTD. 8/06/2006.

EXT.P3: COPY OF THE JUDGMENT IN WP(C) NO.9108/07 OF THIS HON'BLE COURT DTD. 19/03/2007.

EXT.P4: COPY OF THE ORDER NO.E3-7360/99 DTD. 23/04/07 OF THE 3RD RESPONDENT.

EXT.P5: COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 19/05/07.

9TH RESPONDENT'S EXHIBIT:

EXT.R9A: COPY OF COMMISSION REPORT DTD. 17/07/2000 IN O.S.NO.272/2000.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 28514 of 2007

Dated this the 16th day of November , 2007

JUDGMENT

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner arraying inter alia the 3rd respondent , the Secretary of the Perumbavoor Municipality and respondents 4 to 10 persons in authorised occupation of portions of 60 cents of puramboke land in Re-Sy. No.5 in Block No.65 of Perumbavoor Village seeking implementation of Ext.P4 order issued by the 3rd respondent or demolition and removal of certain constructions put up by respondents 4 to 10 on the puramboke land and also for a direction to the 2nd respondent District Collector to consider Ext.P5 representation submitted by the petitioner and to evict respondents 4 onwards and the other occupants of the puramboke land in question.

2. On behalf of the party respondents, 9th respondent has filed a detailed counter affidavit. As regards the prayer for implementation of Ext.P4, it is contended in paragraph 5 of that counter affidavit that it is for the Municipality to proceed in terms of Ext.P4 and that the party respondents do not in any manner stand in the way of the Municipality

taking appropriate proceedings, as are permissible in law, for implementation of Ext.P4. However, it is also pointed out in the same paragraph that it is learned by the respondents that some civil case is pending before the Munsiff Court, Perumbavoor, wherein Ext.P4 is subject matter of challenge. The prayers made in the Writ Petition, as regards Ext.P5, are not seen resisted in the above counter affidavit.

3. The Perumbavoor Municipality, the 3rd respondent has filed a statement wherein, it is stated that authorization was given under Ext.P4 to the Building Inspector of the Municipality to effect the demolition of the unauthorized building put up by the party respondents. It is further stated that in the meanwhile, one Sri.T.K.Kamal and two others filed O.S.152/2007 before the Munsiff Court, Perumbavoor claiming to be tenants of the various unauthorized building sought to be demolished and they have obtained an order of injunction dated 30.4.2007. It is stated that the Municipality has filed a counter affidavit before the Munsiff Court. But the matter is still pending before the Munsiff Court. It is also pointed out that the petitioners before the Munsiff Court, the so called tenants have no right to get an order of injunction against the Municipality from discharging its statutory obligations. It is stated that it is because of the injunction order that the Municipality is not in a

position to implement Ext.P4 order.

4. The petitioner has filed a reply affidavit, wherein the petitioner's avements in the writ petition are reiterated. It is stated therein that Ext.P4 has attained finality and that no civil case challenging Ext.P4 is pending in the court which soever.

5. I have heard the submissions of Sri.P.Gopalakrishnan Nair, the learned counsel for the petitioner, Sri.Sadchit. P.Kurup, the learned counsel for respondents 4 to 10, Sri.V.M.Kurian, the learned Standing Counsel for the Municipality and Sri.Muhammed Anzar, the learned Government Pleader for respondents 1 and 2.

6. Sri.Gopalakrishnan Nair submitted that Ext.P4 has attained finality and no civil court has passed any order restraining enforcement of Ext.P4. The injunction order, which has been issued by the Perumbavoor Munsiff Court, is an order restraining the Municipality from evicting the petitioner other than through due process of law. Since Ext.P4 has been issued in exercise of statutory powers, implementation of Ext.P4 will not amount to violate the order of the Civil Court. Drawing my attention to the stand taken by respondents 4 to 10, who are the landlords of the plaintiffs before the Civil Court, he submitted that it is conceded by them that they do not propose to stand in the way of Ext.P4 being enforced. The occupant of the

building, which are subject matter of Ext.P4, cannot have the protection of the Rent Control Act since the buildings have been found to be unauthorized structures put up by encroachers on the Government puramboke. The suit itself, according to the learned counsel, is a collusive affair between the plaintiffs therein and the 4th respondent. The suit cannot be maintainable in law in view of Section 563 of the Municipality Act. An order of injunction restraining enforcement of Ext.P4 will not be sustainable under the Specific Relief Act also.

7. Sri.Sadchit P.Kurup submitted that the writ petition, in so far as the same relates to Ext.P5, is bad for non joinder of necessary parties. He also submitted that enforcement of Ext.P4 during the currency of the order of injunction will amount to violate the injunction which will amount to Contempt of Court and render the Municipality liable for action under Order 39 Rule 2A CPC. also

8. Sri.K.T.Thomas, on behalf of Sri.V.M.Kurian submitted that, the Municipality could have enforced Ext.P4, but for the injunction order, he also submitted that the original suit is a collusive affair between the plaintiffs therein and the respondents 4 to 10. The Municipality has promptly filed a counter affidavit in the suit and he requested that the learned Munsiff be directed to take an early

decision on the injunction matter.

9. Sri.Muhammed Anzar, the learned Government Pleader submitted that the District Collector will not have any difficulty in disposing of Ext.P5. Copy of the plaint in the suit pending before the Munsiff Court, Perumbavoor was placed before me by the learned counsel for the petitioner. It is seen that the Secretary of the Municipality is the 4th respondent in that suit and that plaintiffs therein are one Sri.K.K.Kamal, Sri. Anass and E.S.Khader and defendants 1 to 3 therein are respondents 4 , 9 and 10 in this Writ Petition. The claim of the plaintiffs is that they are in occupation of the building covered by Ext.P4 order as tenants governed by Act 2 of 1965 and that they are liable to be evicted only by the process of that Act.

10. In fact, the main prayer in the suit is for a decree of injunction restraining the eviction of the plaintiffs other than through the process of the Buildings Lease and Rent Control Act. The argument of Sri.P.Gopalakrishnan Nair that the since buildings have been put up on Government puramboke by respondents 4 to 10, who are encroachers of those buildings will not be governed by Act 2 of 1965 cannot be accepted. What Section 11(1) of the Buildings (Lease & Rent Control) Act provides is that the provisions of the Act will not apply to the tenants whose landlord is the State Government or the

Central Government or a notified public authority. Section 25 of the Act 2 of 1965 confers power on the Government to exempt any building or class of buildings from the purview of Act 2 of 1965. Concededly there is no landlord tenants relationship between the State Government and the occupants of the buildings in question. Landlord tenant relationship if at all in respect of these buildings is between the occupants and respondents 4 to 10. No notification has been issued under Section 25 exempting unauthorized building put up by the encroachers on the Government puramboke from the purview of Act 2 of 1965. It may therefore not be possible to say that Act 2 of 1965 does not have anything to do with the buildings in question. But at the same time Sri.Gopalakrishna Nair's arguments on the basis of Section 563 of the Municipalities Act and the provisions of the Specific Reliefs act that an injunction to restrain the local authority from implementing Ext.P4 order statutorily passed will not be sustainable and that the suit itself is not maintainable has considerable force. The Municipality has already filed counter affidavit before the Munsiff Court Perumbavoor. It is necessary that the learned Munsiff passes final orders on the injunction petition at the earliest so as to enable the Municipality to implement Ext.P4 order which has attained finality.

11. I am informed that apart from the plaintiffs in the suit before

the Munsiff court, there are other encroachers on the purmaboke land made mention of in Ext.P5 representation before the District Collector. It is for the District Collector to consider Ext.P5 after holding such enquiries and after hearing the occupants of the land to take a proper decision on Ext.P5.

12. The result is that, the writ petition will stand disposed of issuing the following directions:

i). The learned Munsiff, Perumbavoor before whom I.A.1794/2007 and O.S.152/2007 are pending, will pass final orders in I.A.1794/2007 after hearing the parties therein, particularly in the suit and the Municipality the 4th respondent defendant. While taking decision, the learned Munsiff will have due regard to the contentions raised by the Muncipality regarding maintainability of the suit and also regarding the grantability of an order of injunction restraining the discharge of its statutory duties. The order, as directed above, will be passed by the learned Munsiff at the earliest and at any rate within three weeks of receiving a copy of this judgment.

ii). The District Collector, Ernakulam, before whom Ext.P5 representation is pending, will take an early decision on Ext.P5. Decision as directed will be taken after holding necessary enquiries

through the local Tahsildar or Village Officer and after hearing the persons in occupation of the land which is subject matter of Ext.P5.

PIUS C. KURIAKOSE,
JUDGE.

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